

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' NEW DELHI**

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

**ITA Nos. 7165 & 7166/Del/2019
Assessment Years: 2010-11 & 2011-12**

Ayush Dabas, Plot No. 3, vs. DCIT, Central Circle-18,
Sector-10, Dwarka City Centre, New Delhi
Dwarka, New Delhi
PAN : ALCPD9217B
(Appellant) (Respondent)

Appellant by : Sh. Mahavir Singh, AR
Respondent by: Sh. Om Prakash, Sr. DR

Date of hearing: 05.05.2022
Date of order : 13.05.2022

ORDER

These appeals filed by the assessee are directed against the orders dated 10.11.2014 passed by Id. CIT(A)-32, New Delhi for the assessment years 2010-11 and 2011-12. Both these appeals are filed with a delay of 1783 days, for which the assessee has filed an application to condone the delay.

2. I have heard the arguments of both the sides on the application of assessee requesting to condone the delay of 1783 days in filing the appeals before the Tribunal. Learned counsel submitted that the assessee is a green card holder and is graduate from business school of Columbia. Photocopies of passport showing

absence of assessee from India are also stated in chronological chart. It was in August, 2019, the assessee became aware of the fact when he received a notice from ACIT, CC-18 for making payment of outstanding demand of tax. Thereafter, the assessee obtained copy of first appellate order and filed these appeals, therefore, the delay may kindly be condoned and appeals may kindly be admitted for hearing. Ld. Counsel has also relied on various judgments including the judgment of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji, 167 ITR 471 (SC).

3. Replying to the above, Id. Sr. DR reiterated his written submissions which are as follows :

"MAY IT PLEASE YOUR HONOURS

Sub: Written Submission in the above case- req.

In the above case, following material facts and relevant case laws may kindly be considered.

Factual Matrix: *In this case, the assessee being a part of Dabas Group of cases, searched on 14.09.2010 u/s 132 of the I T Act, 1961 and accordingly, the assessment was framed u/s 143[3]/I 53A along with other group cases. The subject matter of the present appeal are three additions i.e. Rs.350000/- u/s 69 on account of unexplained cash deposit, and aggregate of Rs. 1455500/- on account of credits claimed to have been received from Smt. Shakuntala Manocha [Rs.528000], Sh. Ramesh [Rs.200000] and Sh. D S Dabas [Rs.727500]. All these three additions have duly been confirmed by the Ld CIT [A] vide order dated 10.11.2014. The decision of the Ld CIT[A] has been challenged vide appeal filed before the Hon'ble ITAT Delhi on 27.08.2019, which is almost after five years, with delay of 1783 days exactly.*

Further as per the facts emanating from the assessment/ appeal orders and affidavit filed by the appellant assessee, seeking condonation of the delay, the following important points emerge:

1. Assessee is part of a big business group and also a director of company drawing salary.

2. He was being represented by competent professionals in his tax matters before the tax and appellate authorities.

3. He went to study MBA from an American University in Columbia.

4. As per the details of his absence from India, it is apparent that he was in India for a considerable periods during all the assessment years starting from 14.06.2014 to 05.11.2019 and his residential status was never been that of a non resident.

5. In view of these facts and circumstances it is very unlikely and unbelievable that there was no one to take notice of the impugned order of the Ld.CIT[A] for filing further appeal if any.

In view of the above this case is devoid of merits for granting condonation of delay. It is, therefore, humbly submitted that the following case laws may kindly be considered with regard to condonation of delay:

1. Mewat Grit Udvoq Vs PCIT [2017-TIQL-607-ITAT-DEL]

where Hon'ble 1TAT Delhi held that an assessee cannot claim ignorance of law for condoning the huge delay for 312 days, when the assessee was properly represented by the competent Legal Practiceners before the Revenue authorities and there was no plausible reasons for such condonation.

2. Shri Subodh Parkash Vs JCIT (2017-TIOL-2249-HC-P&H-IT) (Copy Enclosed)

Hon'ble Bombay High Court held that when the explanation submitted by the Assessee does not satisfy the test of 'sufficient cause' as required u/s 5 of the Limitation Act, 1963, the delay cannot be condoned."

4. On careful consideration of above submissions, I am of the considered opinion that the basic requirement of allowing condonation of delay is that the assessee is required to explain by way of bonafide and reasonable cause of delay. Thereafter only, the condonation of delay of a pretty long time of 1783 days can be allowed to the assessee. This is the basic requirement as manifested by Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji (supra). In the present case, Id. Counsel for the assessee could not controvert that the assessee is a part of big business group and also a director of company situated in India and drawing salary there from. It was also not controverted that the assessee was being represented by competent professionals in his tax matters before the Income-tax and Appellate Authorities and he went to study MBA from American University in Columbia. From the details submitted by the Id. AR in support of the condonation petition, it is clearly discernible that the assessee was present in India for a considerable period during all the assessment years starting from 14.06.2014 to 05.11.2019 and the residential status of assessee was never been that of a non-resident. Therefore, respectfully following the judgment of Hon'ble Punjab & Haryana High Court in the case of Shri Subodh ZParkash vs. JCIT (supra) and

order of ITAT Delhi Bench in the case of Mewat Grit Udyog vs. PCIT (supra), I dismiss the petition of the assessee for condonation of delay of 1783 days in filing these appeals before this Tribunal. Consequently, the condonation petition of the assessee is dismissed and the appeals of assessee are also dismissed in limine without admission.

5. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 13.05.2022.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 13/05/2022

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